IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTIETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE MR JUSTICE S.ANANDA REDDY**

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**WRIT PETITION NO : 4471 of 1997**

Between:

Injeti Sudheer Babu, S/o. Late Prakasam, R/o. Tekkali, Srikakulam Dist.
The Cause title amended as per court order dt.5.897 in W.P.No.21642/97

**..... PETITIONER**

AND

1 The Regional Manager, APSRTC, Srikakulam Dist.
2 The Depot Manager, APSRTC, Tekkali Depot, Srikakulam Dist.

**.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any writ, order or direction particularly one in the nature of mandamus declaring the in action of the respondents in passing the impugned proceedings No.P1/145(9)/96-TKL,Dt.31.1.1997 as arbitrary ,illegal, discriminatory and consequently direct the respondents not to recovery towards the emolument paid to the petitioner herein E.465216, Driver of Tekkali Depot on account of decasualisation i.e. from 2.8.96 to 31.1.1997.

**Counsel for the Petitioner : MR.K.BHEEMA RAO**

**Counsel for the Respondents : MR.V.T.M.PRASAD (S.C.FOR APSRTC)**

**The Court made the following :**

ORDER :

This Writ Petition is filed by the petitioner, aggrieved by the impugned order dated 31.01.1997 passed by the 2nd respondent, under which the order of regularization of the services of the petitioner, dated 17.08.1996 was cancelled with an observation that his case can be processed for decasualisation after the completion of the punishment period, which was imposed by proceedings dated 06.09.1995 for deferment of decasualisation for a period of two years.

It is stated that the petitioner was appointed as a Driver on a casual basis in the year 1991. Subsequently his case was considered along with others for regularization and accordingly regularization orders were passed by the 2nd respondent, dated 17.08.1996, giving effect from 01.08.1996. These orders were passed by the Depot Manager, Tekkali. But however, subsequently, the respondents came to know that an order of deferment of decasualisation was passed against the petitioner while he was working at Palasa Depot. As per the said punishment order, decasualisation was deferred for a period of two years. As the order of regularization was passed contrary to the said orders, the 2nd respondent issued the impugned order, cancelling the order of regularization together with ordering for recovery of the differential

wages in 12 equal monthly instalments commencing from February, 1997. Aggrieved by that, the petitioner has come up with the present Writ Petition.

The learned Counsel for the petitioner contended that the respondents have committed grave error, violating the principles of natural justice. It is stated that petitioner has already suffered due to the punishments imposed, therefore the respondents are not entitled to pass the impugned order without even issuing a notice thereby violating the principles of natural justice. Therefore the impugned order is liable to be set aside. The learned Standing Counsel for the respondents on the other hand, supported the order.

The issue to be considered in this Writ Petition is whether the impugned order passed by the 2nd respondent is just and proper.

It is not in dispute that the petitioner was originally appointed as a casual Driver in the Respondents' Corporation. The 2nd respondent passed the order of regularization dated 17.08.1996, regularizing the services of the petitioner along with others with effect from 01.08.1996. But by the time the said order was passed, the 2nd respondent was not aware of the fact that an order was passed against the petitioner while he was working at Palasa Depot as per which, decasualisation was deferred for a period of two years by proceedings dated 06.09.1995. The said fact was not informed to the Regional Manager's Office, Srikakulam, which approved the list of Drivers for regularization pursuant to which the 2nd respondent had issued orders on 17.08.1996. When this fact came to the knowledge of the Regional Manager's Office, proceedings were initiated for cancellation of the regularization orders with reference to the petitioner, pursuant to which the 2nd respondent passed the order on 31.01.1997, not only for cancellation of the decasualisation of the petitioner but also for the recovery of the emoluments which were paid in excess than to which the petitioner was entitled as a casual Driver. Though the petitioner contended that the impugned order was

passed without any notice, there cannot be any improvement even if a notice is issued, calling for explanation from the petitioner, as it is not disputed that an order of punishment was passed on 06.09.1995 deferring the decasualisation for a period of two years. Therefore, during the subsistence of the said punishment, the petitioner was not entitled for decasualisation. The said punishment would have expired by 06.09.1997 and thereafter only, his case ought to have been considered for decasualisation. Therefore, there is no merit in the contention of the petitioner that the impugned order was passed without giving any show-cause notice and opportunity. The petitioner's case for decasualisation can be considered only after the expiry of the period of punishment of two years, which would expire by 06.09.1997.

Under the above circumstances, the Writ Petition is disposed of, directing the respondents to give effect to the order of regularization from the date immediately after the expiry of the period of punishment, by passing appropriate orders. Since the petitioner has been working as a regular Driver by virtue of the interim order passed by this Court, he is also entitled to the emoluments as a regular Driver for the period immediately after the expiry of two years i.e. after 06.09.1997 and if the petitioner is entitled for any arrears by virtue of the said order, the arrears are directed to be paid within a period of two months from the date of receipt of a copy of this order.

If any emoluments have already been paid in excess to which the petitioner was actually entitled and which were proposed to be recovered under the impugned order dated 31.01.1997, the Corporation is at liberty to recover the excess remuneration or emoluments paid pursuant to the order dated 31.01.1997.

Writ Petition is accordingly disposed of. No costs.

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20th September, 2004.

ajr

To

1 The Regional Manager, APSRTC, Srikakulam Dist.
2 The Depot Manager, APSRTC, Tekkali Depot, Srikakulam Dist.

3 Two C.D. copies.